

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS PENSION FUND,
CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS HEALTH AND WELFARE
FUND, and HOWARD McDOUGALL, trustee,

Plaintiffs,

v.

AGL RESOURCES, INC., a Georgia Corporation;
NUI CAPITAL CORP., a Florida corporation; and
PIVOTAL UTILITY HOLDINGS, INC.,
f/k/a NUI UTILITIES, INC., a New Jersey corporation,

Defendants.

Case No. 07 C 6933
Judge Blanche M. Manning
Magistrate Judge Denlow

**PLAINTIFFS' MOTION FOR LEAVE OF COURT
TO FILE SECOND AMENDED COMPLAINT**

Plaintiffs, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, request leave to file a Second Amended Complaint, a copy of which is attached hereto as Exhibit

A. In support of said motion, Plaintiffs state as follows:

1. On December 10, 2007, Plaintiffs filed a lawsuit against Defendants to collect contributions owed based on the audit of NUI Capital Corp's and Pivotal Utility Holdings, Inc., f/k/a NUI Utilities, Inc.'s records for the period December 22, 2002 through December 25, 2005.

2. Based upon the underreporting for the audited period of December 22, 2002, through December 25, 2005, the Pension Fund also believed that Defendant Pivotal Utility Holdings, Inc., f/k/a NUI Utilities, Inc. owed contributions to the Pension Fund for the period of April 1, 2001 through December 21, 2002 and the period December 26, 2005 through

December 31, 2007. As such, the Pension Fund and Health and Welfare Fund sought to expand the audit of Pivotal Utility Holdings, Inc., f/k/a NUI Utilities, Inc. to cover the period April 1, 2001 through December 21, 2002 and the period December 26, 2005 through December 31, 2007.

3. On February 1, 2008, prior to Defendants filing an answer or otherwise pleading to the Complaint, Plaintiffs filed a First Amended Complaint to include language indicating that both the Pension Fund and the Health and Welfare Fund sought to expand the audit of Pivotal Utility Holdings, Inc., f/k/a NUI Utilities, Inc. for the period December 26, 2005 through December 31, 2007.

4. Defendants filed their Answer to First Amended Complaint and Counterclaim on February 19, 2008.

5. On February 29, 2008, the NLRB certified the results of a decertification election which resulted in the decertification of Local Union No. 769 and Local Union No. 385. As a result, the Defendants withdrew from the Health and Welfare Fund and the Pension Fund.

6. Since the Defendants have withdrawn from the Health and Welfare Fund and the Pension Fund, Plaintiffs seek to expand the audit of Pivotal Utility Holdings, Inc., f/k/a NUI Utilities, Inc. to include the period December 26, 2005 through March 1, 2008.

7. Pursuant to this Court's March 6, 2008 Order, the parties are given until May 30, 2008 to amend the pleadings and to add additional parties.

8. Federal Rule of Civil Procedure ("FRCP") 15(a) provides that leave to amend pleadings should be granted freely when justice requires. In deciding whether to grant leave to amend, the district court should consider whether "there has been undue delay,

. . . prejudice to the opponent, dilatory motive on the part of the movant, or amendment would be futile.” *Figgie Int’l, Inc. v. Miller*, 966 F.2d 1178, 1180-1181 (7th Cir. 1992).

9. Defendants will not be unduly prejudiced if the Court permits Plaintiffs to amend their complaint as discovery in this case does not close until September 5, 2008.

WHEREFORE, Plaintiffs request that the Court grant their Motion for Leave to File Second Amended Complaint.

Respectfully submitted,

May 12, 2008

s/ Rathna C. Rodgers
Rathna C. Rodgers (ARDC #06239131)
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CERTIFICATE OF SERVICE

I, Rathna C. Rodgers, one of the attorneys for the Central States, Southeast and Southwest Areas Pension Fund, certify that on this 12th of May, 2008, I caused the foregoing Notice of Motion and the Plaintiffs' Motion for Leave of Court to File Second Amended Complaint to be filed electronically. This filing was served on all parties indicated on the electronic filing receipt via the Court's electronic filing system.

s/ Rathna C. Rodgers
Rathna C. Rodgers (ARDC #06239131)
One of Central States' Attorneys